

Council Communication
October 13, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A	
Case/Project No.: EZ-08-006	Resolution No.: <u>08-296</u>	Date <u>October 13, 2008</u>
Subject/Title		
Omaha Standard Amendment Request		
Background/Discussion		
<p><u>Background</u></p> <p>Omaha Standard manufactures truck bodies, hydraulic truck hoists, hydraulic liftgates and truck accessories for commercial trucks. They sell primarily through a national network of truck equipment distributors who purchase the company's products. These products are then installed on light and medium duty commercial trucks for truck dealers and end-users. The company has been in existence since 1926.</p> <p>In December 2003, Omaha Standard was approved for Enterprise Zone benefits to assist them with the relocation of their operations out of several outdated facilities scattered throughout Council Bluffs into a new 200,000 square foot facility located at South 11th Street and South Omaha Bridge Road.</p> <p>Construction of the new facility occurred in 2004-2005 and consisted of an investment of \$600,000 in land acquisition, \$8,300,000 in building construction, \$7,500,000 in machinery and equipment and \$1,000,000 in working capital for a total of \$17,400,000. The project also resulted in the creation of 107 new jobs and the retention of 183 employees. The company met all Enterprise Zone wage and benefit requirements.</p> <p>In being approved for Enterprise Zone benefits, the company received 100% of tax abatement for a period of three years on physical improvements; capital investment tax credits of 10%; research activities credits; refund of sales, service and use taxes; and new jobs training supplemental credits. The company also received assistance through the State of Iowa from the CEBA and Values Fund programs.</p> <p><u>Discussion</u></p> <p>The 3-year 100% tax abatement that Omaha Standard received as part of the Enterprise Zone benefits is scheduled to end with the 2008 tax year. During the past three years, the market for truck service bodies has declined dramatically as the general construction market has suffered through the housing market collapse. As such, Omaha Standard has suffered economically and they have requested an extension of their property tax abatement to assist in weathering this economic downturn.</p> <p>According to Iowa law, localities can set their own tax abatement schedules in Enterprise Zones up to a period of 10 years as long as the abatement schedules are consistent for all projects in the particular zone. These schedules can be performance based meaning more abatement can be provided for projects that make larger capital investments and/or create or retain more jobs.</p>		

Council Communication
October 13, 2008 City Council Meeting

Council Bluffs chose to provide a 3-year 100% exemption for all projects. In reviewing past Enterprise Zone approved projects, it was determined that additional tax abatement could be extended to Omaha Standard if we instituted a performance based investment and job creation/retention requirement.

Staff is proposing to amend the Enterprise Zone-1 policies to provide for additional tax abatement benefits for those companies who make a capital investment of at least \$15,000,000 and create or retain a minimum of 100 jobs meeting the EZ requirements. Companies who meet these requirements would be eligible for the following abatement schedule:

- Year 1 – 100% Abatement of Improvements
- Year 2 – 100% Abatement of Improvements
- Year 3 – 100% Abatement of Improvements
- Year 4 – 90% Abatement of Improvements
- Year 5 – 80% Abatement of Improvements
- Year 6 – 70% Abatement of Improvements
- Year 7 – 60% Abatement of Improvements

Omaha Standard has already received Years 1-3 of the proposed schedule, so if approved, would receive the additional abatement provided in Years 4-7 of the proposed schedule. Based on past approved EZ projects, Omaha Standard would be the only company to qualify for these additional benefits.

Also affecting the project is the sale of Omaha Standard to Palfinger Group, an Austrian truck equipment manufacturer. This sale is expected to be completed by the end of October.

Staff Recommendation

The Community Development Department recommends approval of Omaha Standard's request to amend their EZ approval to include the additional tax abatement benefits, contingent upon Omaha Standard continuing to meet all other City codes and ordinances and the sale of the company to Palfinger Group.

Enterprise Zone Commission Recommendation

On September 8, 2008, the Council Bluffs Enterprise Zone Commission met and approved the amendment request from Omaha Standard to include the additional tax abatement benefits. Motion by Biede, second by Andersen to concur with staff recommendation and approve the amendment request from Omaha Standard to include the additional tax abatement benefits. The motion carried by a unanimous voice vote with Norman and Stazzoni abstaining.

VOTE: AYE – Andersen, Biede, Hornbeck, Jares, Milford and Prichard; NAY – None;
 ABSTAIN – Norman and Stazzoni; ABSENT – Bates

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



RESOLUTION NO. 08-296

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS AUTHORIZING
ADDITIONAL ENTERPRISE ZONE TAX ABATEMENT BENEFITS TO OMAHA STANDARD
INCORPORATED.**

- WHEREAS,** the City of Council Bluffs established Enterprise Zone-1 pursuant to Iowa House File 724 with the adoption of Resolution No. 97-201 and amended by Resolution Nos. 97-234 and 99-23; and
- WHEREAS,** enterprise zones and the eligible benefits under House File 724 were established to promote economic and housing development in distressed areas; and
- WHEREAS,** on December 29, 2003, the Enterprise Zone Commission approved the application of Omaha Standard for benefits; and
- WHEREAS,** Omaha Standard constructed a new 200,000 sq. ft. facility off of South 11th Street and South Omaha Bridge Road; and
- WHEREAS,** on September 8, 2008, the Enterprise Zone Commission held a public meeting to review an amendment request from Omaha Standard; and
- WHEREAS,** after review and consideration of the amendment request, the Enterprise Zone Commission determined that the Omaha Standard project meets the requirements to qualify for additional benefits.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

Section 1.0 That the Commission finds that the Omaha Standard project was approved for benefits within the Council Bluffs Enterprise Zone-1 as approved with the adoption of Resolution No. 97-201 and amended by Resolution Nos. 97-234 and 99-23.

Section 2.0 That the Commission declares that Omaha Standard remains an eligible business for Enterprise Zone benefits.

Section 3.0 The Commission exempts Omaha Standard from taxation the actual value added by improvements to real property beginning the year the improvements are first assessed for taxation within the enterprise zone based on the following schedule:

Year 1 – 100% Abatement of Improvements
Year 2 – 100% Abatement of Improvements
Year 3 – 100% Abatement of Improvements
Year 4 – 90% Abatement of Improvements
Year 5 – 80% Abatement of Improvements
Year 6 – 70% Abatement of Improvements
Year 7 – 60% Abatement of Improvements

Section 4.0 That the Commission shall file this resolution with the Pottawattamie County Assessor and Recorder.

Section 5.0 The Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution.

Section 6.0 The provisions of this resolution shall be governed by the laws of the State of Iowa.

Section 7.0 That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

Section 8.0 That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

Section 9.0 That the approval of the additional Enterprise Zone benefits is contingent upon Omaha Standard meeting all other City codes and ordinances, including, but not limited to the locally adopted Enterprise Zone requirements.

Section 10.0 This approval of additional tax abatement is contingent upon the sale of Omaha Standard to Palfinger Group.

Section 11.0 That this resolution shall become effective immediately upon its passage and approval.

ADOPTED

AND

APPROVED: October 13, 2008

Thomas P. Hanafan

Mayor

ATTEST:

Judith H. Ridgeley

City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this _____ day of _____, 2008, before me the undersigned, a Notary Public in and for said County and State, personally appeared Thomas P. Hanafan and Judith H. Ridgeley, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Judith H. Ridgeley, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

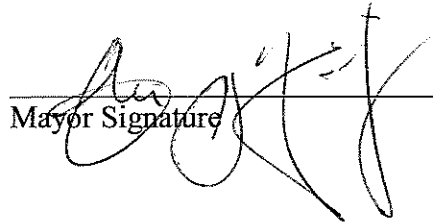
Notary Public in and for said State

Council Communication

Department: Legal	Ordinance No.	
Case/Project No.	Resolution No. 08-299	Date: October 13, 2008
Subject/Title		
Resolution authorizing the Mayor to approve an Amendment to the Development Agreement between Pottawattamie County Development Corporation (PCDC) and Broadway Ventures, LLC.		
<p>The initial agreements between the City and PCDC provided that the City would approve all agreements with developers. The City has reviewed and approved the development agreement with Seldin and the various amendments over the last couple years.</p> <p>Attached for City approval is what should be the final amendment. The substantive provision of this agreement is that Seldin will purchase Lot 3, which was originally to be purchased by Hy-Vee for a gas station. As you know, Hy-Vee backed off on its intention to build a gas station because of environmental concerns. A covenant has been placed on the property that will prohibit gas stations.</p> <p>Exhibit A which is not attached is an environmental indemnity agreement between PCDC and the purchasers. PCDC will continue to perform environmental remediation on the property for a period of time.</p> <p>The parties hope to close, as early as this next week, on the sale of Lots 2 and 3 and the PCDC property south of the tracks (23 lots) to Seldin. That is all the remaining property.</p>		
Recommendation		
Approve Resolution authorizing the Mayor to approve the Amendment to the Development Agreement between Pottawattamie County Development Corporation (PCDC) and Broadway Ventures, LLC.		

Department Head Signature

Mayor Signature



RESOLUTION NO. 08-299

A RESOLUTION authorizing the Mayor to approve the Amendment to the Development Agreement between Pottawattamie County Development Corporation (PCDC) and Broadway Ventures, LLC.

WHEREAS, the initial agreements between the City and PCDC provided that the City would approve all agreements with developers; and

WHEREAS, PCDC and Broadway Ventures, LLC entered into a Development Agreement dated May 20, 2005. Amendments were entered into on July 26, 2007 and November 26, 2007; and

WHEREAS, it would be in the best interests to authorize the Mayor to approve the Amendment to the Development Agreement between PCDC and Broadway Ventures, LLC.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to approve the Amendment to the Development Agreement between Pottawattamie County Development Corporation and Broadway Ventures, LLC.

ADOPTED

AND

APPROVED October 13, 2008

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

City Clerk

AMENDMENT TO DEVELOPMENT AGREEMENT

This Agreement is made and entered into by and between Pottawattamie County Development Corporation (PCDC) and Broadway Ventures, LLC (Developer):

1. The parties previously entered into a Development Agreement dated May 20, 2005. The parties entered into an amendment to the Agreement on June 26, 2007 and entered into a further amendment dated November 26, 2007.

2. The Development Agreement as amended includes a due diligence period. The parties have from time to time entered into agreements extending the due diligence, with the latest extension now being to September 30, 2008.

3. That part of the property that is the subject of the Development Agreement that is north of First Avenue and south of West Broadway has now been surveyed, and is included in a subdivision plat dated July 25, 2007, which has been prepared by Lamp, Rynearson & Associates, Inc. Said property is now described as Lots 1, 2, and 3 of Hy-Vee at West Broadway Subdivision.

4. Hy-Vee, Inc. has now purchased Lot 1. Hy-Vee, Inc. previously had an exclusive option on Lot 3, which has now expired.

5. The Development Agreement, as amended provides for the purchase of Lot 2 by Developer. The Development Agreement, as amended, is hereby further amended to include the purchase of Lot 3 by Developer. The purchase price for Lot 3 shall be \$7.00 per square foot and the remaining terms and conditions of the Development Agreement, as amended, shall apply.

6. The Developer also has the following exclusive options as established in the amendment to development agreement dated November 26, 2007.

- a. The option to purchase Lot 1 in the event Hy-Vee does not exercise its option is no longer applicable.
- b. An option to purchase Lots 1 through 23 in Block 4, Wright's Addition.

The option to purchase Lots 24 and 25, Block 37 Central Subdivision is no longer applicable.

7. Developer's due diligence to purchase Lot 2 & 3 and Developer's options to purchase Lots 1-23, Block 4, Wrights Addition shall be extended until: Fifteen (15) business days after Developer's title and survey objections

on Lot 3 are resolved to its satisfaction in its sole judgment. Closing shall occur within 30 days after the expiration of the due diligence period, provided Developer has exercised its right to proceed with same within the due diligence period.

8. PCDC represents that there are two registered environmental sites on Lot 2: Finish Line (Registration No. 198605033; LUST No. 8LTC26) and Harmon Glass (Registration No. 197910551; LUST No. 9LTM20). Both sites relate to leaking fuel tanks which were previously located on the property.

9. PCDC represents that: a) The Finish Line site is eligible for 100% reimbursement of costs for remediation and monitoring (subject to prior budget approval) up to a cap of one million dollars (\$1,000,000.00); b) As of May 16, 2008, a total of \$134,022.86 has been reimbursed on the site; c) An excavation of the site was recently completed and post-excavation monitoring will be required into the future; and d) Thiele Geo Tech estimates the cost of the excavation and post-excavation monitoring to be \$450,000.00.

10. PCDC represents that: a) The Harmon Glass site is eligible for 100% reimbursement of for remediation and monitoring costs (subject to prior budget approval) up to a cap of one million dollars (\$1,000,000.00) b) Three Hundred Fifteen Thousand Five Hundred Twenty-Seven Dollars and Seventy-Seven Cents (\$315,527.77) has been reimbursed on this site to date; and c) The IDNR has accepted the Tier III monitoring plan at this site.

11. PCDC agrees to execute and record environmental agreements at closing in the form attached hereto as Exhibit "A" for Lots 2 and 3.

12. PCDC shall include Developer or its designee in any negotiations and material discussions with IDNR, the Underground Storage Tank Fund, or other environmental governmental agency in regard to the Required Remediation. PCDC will further include Developer in any discussion regarding agreements concerning use restrictions, environmental covenants and/or modifications of remediation requirements; any agreements concerning same including without limitation modifications of same, shall be subject to Developer's prior approval. PCDC agrees it will not request a Certificate of No Further Action with regard to the Finish Line and/or the Harmon Glass site until Developer agrees that it is the proper time to do so.

13. Paragraph 15 of the original Development Agreement provides that Developer will accept the property in "as is, where is" condition. The parties acknowledge that the foregoing provision does not negate the responsibility of PCDC to address the environmental sites identified in paragraph 8 hereof in the manner provided for in the Development Agreement, as amended.

14. PCDC will procure before closing a written acknowledgment acceptable to Developer from USTF for continued payment of costs and expenses for the PCDC remediation and/or monitoring per paragraph 9 and 10

above following the transfer of title to Developer and any transferee of Developer.

15. The parties acknowledge that the Development Agreement was approved by the City of Council Bluffs. This Addendum will likewise not become effective and binding upon the parties until it has been approved and authorized by the City of Council Bluffs. Upon execution of this Addendum, PCDC will promptly schedule City Council action to approve of same, and if such approval is not obtained by September 22, 2008, Developer shall have the right at any time thereafter to terminate the Agreement by notifying PCDC thereof. Upon any such termination, Developer shall be entitled to a return of its deposit. Upon PCDC obtaining City Council approval or denial, it shall immediately notify Developer.

16. Developer shall have the right to terminate the Development Agreement as to any separate property covered thereby and be entitled to a refund of its deposit (or prorata by land area for any partial termination), if at any time the environmental condition of the Property including without limitation the ability to construct the building, utilities and associated improvements it contemplates for the Property due to environmental issues or restriction on the development or use thereof imposed by IDNR or other environmental governmental agency, which were unknown to Developer during the due diligence period, is unacceptable to Developer in its sole discretion.

17. Within the due diligence period, PCDC shall terminate existing utility easements in the vacated alley on Lot 3.

18. Section 11 of the original Development Agreement dated May 20, 2005 shall be amended to add the provision that PCDC shall at closing assign the existing communications tower lease to Developer and all rents shall be prorated as of the date of closing. PCDC shall procure an estoppel certificate from Tenant to be dated within thirty (30) days of closing which states matters satisfactory to Developer including but not limited to the status of the lease and rents and whether the Landlord (PCDC) is in any default thereunder.

19. PCDC agrees to assist Developer in the following regards:

- a) To obtain Hy-Vee's approval to allow for a change in the height restriction applicable to Lot 2 to allow for a higher architectural element;
- b) To obtain the rezoning of Lot 1-23, Block 4, Wrights Addition.
- c) To obtain approval of IDNR of proposed construction plans on Lot 2 and Lot 3; and

d) To obtain a letter or statement from IDNR that in the future they will only require monitoring in regard to known contaminants on the Harmon Glass site.

This obligation shall survive the closing.

20. In regard to Lot 3, the parties agree to enter into an assignment and assumption agreement at closing for the escrow agreement attached hereto as Exhibit B whereby PCDC assigns, and Developer assumes, the rights and obligations thereunder. Developer shall reimburse PCDC at closing for the amounts of this escrow as applicable for Lot 3 and Developer or its assigns shall be entitled to the payment from the escrow agent upon the release of the escrow. In regard to the escrow agreement with the City applicable to Lot 2, the parties acknowledge that Developer's purchaser First National Bank of Omaha, N.A. will provide a substitute escrow agreement at closing.

21. In the event that Developer elects to purchase the property, and if Developer elects to effectuate an Internal Revenue Service Section 1031 Exchange, PCDC agrees to cooperate with Developer to facilitate such like-kind exchange at no cost to PCDC.

Dated: _____

Pottawattamie County Development
Corporation

By: _____
A.W. Tauke, President

Dated: _____

Broadway Ventures, LLC

By: Northwood Properties, Inc.,
Manager

By: _____
Randall Lenhoff, President

EXHIBIT B

AGREEMENT FOR ESCROW OF SECURITY FUND

WHEREAS, Pottawattamie County Development Corporation; of Council Bluffs, Iowa, hereinafter called "Developer" has made application to the City of Council Bluffs for permission to construct Hy-Vee on West Broadway Subdivision improvements consisting of paving and storm and sanitary sewer improvements within the plat of

Lots 1 through 13, inclusive, Block 38, CENTRAL SUBDIVISION; Lots 1 through 6, inclusive, Block 4, COCHRAN'S ADDITION; Lots 1 through 9, inclusive, MARTINS SUBDIVISION; Lots 5 and 6, and the West Half of Lot 4, Block 2, STREET'S ADDITION, Lots 1 through 18, inclusive, Block 1, WRIGHT'S ADDITION, AND Lots 1 through 4, inclusive, AUDITOR'S SUBDIVISION OF LOTS 19 THROUGH 23, INCLUSIVE IN BLOCK 1, WRIGHT'S ADDITION, subdivisions, as surveyed, platted and recorded in Pottawattamie County, Iowa, TOGETHER WITH all vacated streets and alleys within the bounded area, EXCEPT a twenty foot chamfer in the northwest corner of Lot 13, Block 38, in said CENTRAL SUBDIVISION, the entire tract described by metes and bounds as follows: Beginning at a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 11973 at the intersection of the south right of way line of West Broadway with the west right of way line of South 23rd Street; Thence South 00°44'31" West (assumed bearings) for 371.88 feet along said west right of way line to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 5414 in the north right of way line of 1st Avenue; Thence North 89°09'58" West for 890.63 feet along said north right of way line to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 11973 in the east right of way line of South 25th Street; Thence North 01°03'01" East for 352.94 feet along said east right of way line to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 11973 and the southerly corner of said twenty foot chamfer; Thence North 46°06'58" East for 28.32 feet along the twenty foot chamfer line to a 5/8" rebar with 1 1/4" yellow plastic cap stamped LS 11973 in the south right of way line of West Broadway and the easterly corner of said twenty foot chamfer, Thence South 89°06'04" East for 868.67 feet along said south right of way line to the Point of Beginning. Contains 7.601 acres

in the City of Council Bluffs, Pottawattamie County, Iowa.

WHEREAS, Developer desires to construct and install the aforesaid improvements on Lot 3 of Hy-Vee on West Broadway Subdivision privately and guarantee the same by placing funds in an escrow account as security for performance of said construction rather than posting performance bonds. Hy-Vee, Inc. will construct and

install all of the aforesaid improvements on Lot 1 of Hy-Vee on West Broadway Subdivision and will separately post a performance bond or place the funds in escrow.

NOW, THEREFORE, IT IS AGREED by and between Pottawattamie County Development Corporation and the City of Council Bluffs, Iowa a municipal corporation, hereinafter called "City" as follows:

1. That prior to Final Plat Approval of the aforesaid improvements, and recording of the plat, Developer shall deposit the sum of \$ 35,871.11 with Frontier Savings Bank as escrow agent for the City, the same to be held in escrow as security to guarantee the construction of aforesaid improvements. Exclusive of any guarantee period and of any valid extension of time granted by the City all work shall be completed on or before 36 months from the date of this agreement.
2. The funds designated for any one improvement less the retainage, if any is provided for in the Developer's agreement with contractors, may be partially released from Escrow by Frontier Savings Bank to the Developer when authorized by the City Engineer. The final release of the funds in the account designated as the security shall not be made until the improvements have been completed to the satisfaction of the City and the City has certified to Frontier Savings Bank by certified letter from the City Engineer of the City of Council Bluffs that the construction has been completed for that improvement and the funds can be released. In the event any or all of the aforesaid improvements are not completed to the satisfaction of the City by the completion dates listed in paragraph 1, supra, the City shall have the right to complete said improvements. Upon completion of same the City shall request payment from Frontier Savings Bank and shall provide the Frontier Savings Bank with a certification evidencing completion of same. Upon receipt of said request for payment and certification of completion Frontier

Savings Bank shall pay to City the balance of the escrow fund or the amount certified by the City Engineer as being expended, whichever is the lesser.

3. The conditions of final release of the escrow funds upon completion of the improvements set forth in paragraph 2, supra, shall include payment in full of any and all costs due to the City by the Developer in connection with the development and construction of such improvements including, but not limited to, engineering costs, inspection costs, and survey costs.

4. This Agreement shall be contingent upon its execution by the parties hereto, the deposit of the required security funds with Frontier Savings Bank as escrow agent for the City of Council Bluffs, and the acceptance of this Agreement by said agent.

5. Frontier Savings Bank shall be liable as a depository only.

6. Upon deposit of the security funds as provided in this Agreement, the City agrees to waive the requirements that Developer post performance bonds for completion of the aforesaid improvements.

7. The escrow account shall draw interest and interest accrued shall belong to Developer or its assignee and shall be added to and become a part of the escrow funds.

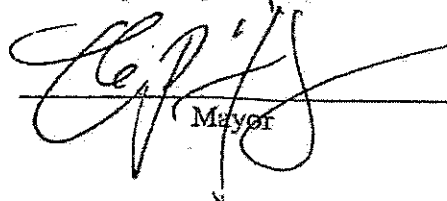
8. Developer and its successors and assigns may assign its rights and obligations under this agreement, including its right to the escrow funds, to its successor in title to Lot 3 of Hy-Vee on West Broadway Subdivision.

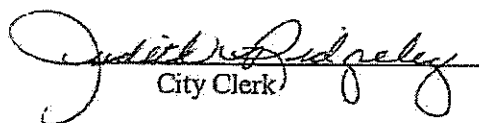
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
executed this 27th day of August, 2008.

Pottawattamie County Development
Corporation

By: 
A. W. Tauke, President

City of Council Bluffs, Iowa
a municipal corporation,


Mayor


City Clerk

Approved:


City Attorney

ACCEPTANCE OF ESCROW AGREEMENT

Frontier Savings Bank hereby agrees to the terms and instructions listed in the Agreement for Escrow of Security Fund and acknowledges that it has accepted a deposit in the sum of \$ 35,871.11 from Pottawattamie County Development Corporation to be held in Escrow Account No. 611128 by Frontier Savings Bank as escrow agent for the City of Council Bluffs, Iowa, a municipal corporation, to ensure construction of the improvements listed in the above and foregoing Agreement and further agrees not to release any of said monies placed on deposit to secure construction of said improvements until it has received written authorization from City of Council Bluffs and in accordance with the "Agreement for Escrow of Security Fund".

DATED this 28th day of August, 2008.

ATTEST:

Frontier Savings Bank

By: [Signature]

Title: President CEO

Council Communication

Department: Community Development Case/Project No. N/A	Resolution No. <u>08-308</u>	City Council: 10/13/08
<p style="text-align: center;">Subject/Title</p> <p>On June 23, 2003, City Council adopted Resolution No. 03-138 which approved the Playland Park Urban Renewal Plan and Area. The urban renewal area established by this action includes 89 acres of developed and undeveloped property in the vicinity of I-480 and 41st Street. The intent of this action was to cause the redevelopment of the Former Frito Lay site and adjacent properties and develop the vacant land on both sides of the Missouri River levee generally west of North 40th Street and south of Avenue B. As you are aware, the former Frito Lay site was acquired and prepared for the construction of a multi-family housing project. Further, a development plan for the vacant land on both sides of the Missouri River levee generally west of North 40th Street and south of Avenue B was adopted on December 10, 2007. Efforts are now underway to implement the recommendations of this document.</p>		
<p style="text-align: center;">Background/Discussion</p> <p>The area included in the development plan includes the existing Playland Park. Playland Park consists of 8.83 acres and was constructed in the early 1980s using federal Land and Water Conservation Funds (LAWCON). Plans propose to convert 7.26 acres of Playland Park for public infrastructure and private development. However, LAWCON regulations require an equal monetary value replacement of any park land that was previously assisted with LAWCON funds. Based on an appraisal by Mitchell and Associates, the monetary value of the 7.26 acres has been established at \$240,000. Therefore, in order to convert the 7.26 acres of park land, a total of \$240,000 land will need to be acquired at other locations within the community. Staff anticipates the acquisition of 3 parcels of land will be necessary to meet this requirement. City Council has previously approved the acquisition of 850 West Graham and property at North 13th Street and Avenue B.</p> <p>Currently, two half blocks of property north of 23rd Avenue between South 19th Street and South 21st Street can be acquired. An appraisal was complete on the property which set a value of \$200,000 and the owner is willing to dispose of the property for \$215,000 which is slightly less on a per square foot basis of other properties acquired by the City to the east. Further, the property has been identified for acquisition as open space development by the 23rd Avenue Urban Renewal Plan.</p>		
<p style="text-align: center;">Recommendation</p> <p>Approval of resolution authorizing the Mayor to execute a purchase agreement for the acquisition of Lots 1-12 and adjacent vacated alleys, Block 9 and Lots 1-12 and adjacent vacated alleys, Block 10, Railroad Addition from R W F LLC for \$215,000.</p>		
Submitted By: Donald Gross, Director, Community Development Department		



7 H



RESOLUTION NO. 08-308

A RESOLUTION AUTHORIZING THE MAYOR TO ACQUIRE PROPERTY LOCATED NORTH OF 23RD AVENUE BETWEEN SOUTH 19TH AND SOUTH 21ST STREETS AS PART OF THE PLAYLAND PARK LAND MITIGATION PROJECT.

- WHEREAS,** the City has adopted a development plan for the area north of I-480 and North 41st Street which includes Playland Park; and
- WHEREAS** Playland Park which consists of 8.83 acres was constructed in the early 1980s using federal Land and Water Conservation Funds (LAWCON); and
- WHEREAS** the said development plan proposes to convert 7.26 acres of Playland Park for public infrastructure and private development; and
- WHEREAS,** LAWCON regulations implemented by the Iowa Department of Natural resources (IDNR) require an equal monetary value replacement of converted park land; and
- WHEREAS,** the monetary value of the 7.26 acres has been appraised at \$240,000; and
- WHEREAS,** a parcel of land located North of 23rd Avenue between South 19th Street and South 21st Street can be acquire for \$215,000 which is a partial replacement; and
- WHEREAS,** existing project fund balances are available to acquire the property; and
- WHEREAS,** City Council finds that the acquisition of the property would be in the best interest of the City.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:**

That the Mayor is hereby authorized and directed to execute a purchase agreement for the acquisition of Lots 1-12 and adjacent vacated alleys, Block 9 and Lots 1-12 and adjacent vacated alleys, Block 10, Railroad Addition from R W F LLC for \$215,600.

ADOPTED

AND

APPROVED: October 13, 2008

Thomas P. Hanafan

Mayor

ATTEST:

Judith H. Ridgeley

City Clerk

Council Communication
October 13, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A Resolution No.: <u>08-309</u>	Date: <u>October 13, 2008</u>
Case/Project No.: EZ-08-007		
Subject/Title		
Application for Enterprise Zone Benefits		
Applicant		
Municipal Homes Inc.		
Location		
South 19 th Street and 23 rd Avenue		
Background/Discussion		
<p><u>Background</u></p> <p>Municipal Homes Inc. has submitted a request for Enterprise Zone (EZ) benefits to assist with the construction of 20 multi-family units and 18 townhomes at South 19th Street and 23rd Avenue. In the multi-family building there will be a mix of 2-one bedroom units, 10-two bedroom units and 8-three bedroom units. The townhomes will consist of 8-two bedroom units and 10-three bedroom units. Large green spaces will tie the units together and provide for outdoor activities and social interaction. All of the units will be furnished with a stove, refrigerator, microwave and dishwasher. The townhomes will have washer and dryer hook-ups and the multi-family building will have on-site laundry facilities. The townhomes will also have two car attached garages. Floor plans for the units have been included as a part of the EZ application. Energy efficient construction methods will be used, along with Energy Star appliances and lights.</p> <p>The project is designed to attract clients making 40% to 60% of the area median family income. This means tenants will have incomes that range from \$18,800 to \$28,200 for a one person household. The project will be managed by the Municipal Housing Agency.</p> <p>Municipal Homes Inc. has requested EZ benefits as a part of their financing package. The total project investment is \$6,400,322. The per unit values will range from \$143,220 for a two bedroom townhome to \$179,768 for a three bedroom townhome. The multi-family units range from \$129,259 for the one bedroom units, \$157,176 for the two bedroom units and \$203,333 for the three bedroom units. However, per State statute, only the first \$140,000 of value can be claimed for the Enterprise Zone's 10% investment tax credit. The estimated total financial enterprise zone incentive available to the project is \$201,932, excluding the property tax abatement on the multi-family units. The developer has agreed to comply with the adopted local requirements.</p> <p>The project is currently in the preconstruction phase and the developer would like to begin work in August of 2009 with work finishing by September of 2010. All of this is contingent upon the project receiving low income housing tax credits from the Iowa Finance Authority, which are likely to be awarded in March of 2009. Other sources of funds are anticipated to be from the Iowa Department of Economic Development, the Federal Home Loan Bank of Topeka, bank</p>		

Council Communication
October 13, 2008 City Council Meeting

financing, City HOME funds, a developer sponsor loan and the Iowa West Foundation.

Discussion

The City Council established Enterprise Zone-6 with the adoption of Resolution No. 07-408. The State of Iowa made this possible by the approval of the Enterprise Zone Legislation on July 1, 1997 and the revision of the law during the 1998 legislature to include housing development. Later significant amendments came in 2006 with the adoption of new criteria for new zone designation. The stipulations placed upon eligible housing projects include the construction or rehabilitation of four or more single family houses or one or more multi-family units containing three or more units.

Based on review of the applicant's request, the project listed above meets the requirements and is located in the Council Bluffs Enterprise Zone-6. As a result, the applicant is eligible for the following benefits: 10% investment tax credit and 100% rebate of state sales and utility use taxes. The multi-family component of the project is also eligible for 100% tax abatement for three years on eligible improvements made to the real property.

Staff Recommendation

The Community Development Department recommends approval of the application submitted by Municipal Homes, Inc. for Lots 13 through 23 west ½ of vacated 20th Street, Block 19; east ½ of vacated 20th Street Block 20; and Lots 1-5, 18-22 and 23 & 24, Block 37; Railroad Addition to the City of Council Bluffs, Pottawattamie County, Iowa for Enterprise Zone benefits.

Enterprise Zone Commission Recommendation

On September 30, 2008, the Council Bluffs Enterprise Zone Commission met and approved the Enterprise Zone application from Municipal Homes Inc. Motion by Bates, second by Milford to concur with staff recommendation and approve the Enterprise Zone application as submitted. The motion carried by unanimous voice vote.

VOTE: AYE – Bates, Biede, Hornbeck, Jares, Milford, Norman and Stazzoni; NAY – None;
 ABSTAIN – None; ABSENT – Andersen and Prichard

Attachments

The Municipal Homes Inc. Enterprise Zone application discussed above has been provided under separate cover.

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



RESOLUTION NO. 08-309

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS
AUTHORIZING A JOINT APPLICATION TO THE IOWA DEPARTMENT OF ECONOMIC
DEVELOPMENT (IDED) BY THE COUNCIL BLUFFS ENTERPRISE ZONE COMMISSION
AND MUNICIPAL HOMES INC. FOR ENTERPRISE ZONE BENEFITS.**

- WHEREAS,** The City of Council Bluffs established Enterprise Zone-6 with the adoption of Resolution No. 07-408; and
- WHEREAS,** Enterprise Zones and the eligible benefits under House File 724 were established to promote economic and housing development in distressed areas; and
- WHEREAS,** Municipal Homes Inc. proposes to construct a three story apartment building containing 20 apartments along with 18 town homes and has requested Enterprise Zone benefits; and
- WHEREAS,** All 38 units will be located at 23rd Avenue and South 19th Street; and
- WHEREAS,** The current legal description of the project site is Lots 13 through 23 west ½ of vacated 20th Street, Block 19; east ½ of vacated 20th Street Block 20; and Lots 1-5, 18-22 and 23 & 24, Block 37; Railroad Addition to the City of Council Bluffs, Pottawattamie County, Iowa; and
- WHEREAS,** On September 30, 2008, the Enterprise Zone Commission held a public meeting to review the request of Municipal Homes Inc.; and
- WHEREAS,** After review and consideration of the request, the Enterprise Zone Commission determined that the Municipal Homes Inc. project meets the requirements to qualify for benefits.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

Section 1.0 The City Council finds that the Municipal Homes Inc. project is located within the Council Bluffs Enterprise Zone-6 as approved with the adoption of Resolution No. 07-408.

Section 2.0 The City Council declares Municipal Homes Inc. an eligible entity for Enterprise Zone benefits.

Section 3.0 The City Clerk shall provide a copy of this resolution to the Iowa Department of Economic Development and shall file this resolution with the Pottawattamie County Assessor and Recorder.

Section 4.0 The City Council approves the Municipal Homes Inc. request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

The multi-family component of the project is also approved for a 100% tax abatement for three years on eligible improvements made to the real property.

Section 5.0 The Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution.

Section 6.0 The provisions of this resolution shall be governed by the laws of the State of Iowa.

Section 7.0 That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

Section 8.0 That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

Section 9.0 That the approval of any and all Enterprise Zone benefits is contingent upon Municipal Homes Inc. meeting all other City codes and ordinances.

Section 10.0 That this resolution shall become effective immediately upon its passage and approval.

ADOPTED

AND

APPROVED: October 13, 2008

Thomas P. Hanafan

Mayor

ATTEST:

Judith H. Ridgeley

City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this _____ day of _____, 2008, before me the undersigned, a Notary Public in and for said County and State, personally appeared Thomas P. Hanafan and Judith H. Ridgeley, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Judith H. Ridgeley, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

Council Communication
October 13, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A Resolution No.: <u>08-310</u>	Date: <u>October 13, 2008</u>
Case/Project No.: EZ-08-008		
Subject/Title		
Application for Enterprise Zone Benefits		
Applicant		
Welcome Homes, Inc.		
Location		
Lots 70, 71, 72 & 73 in Zaiger Addition (generally located at Pavich Drive & 28 th Avenue)		
Background/Discussion		
<p><u>Background</u></p> <p>On August 10, 2006 and May 1, 2008, the Enterprise Zone Commission reviewed and approved housing enterprise zone benefits for Welcome Homes, Inc., on twelve lots and four additional lots respectively, all located in Zaiger Addition, a 98 lot residential subdivision located along South 16th Street between 25th and 28th Avenues. Welcome Homes, Inc. has an opportunity to purchase four additional lots in the same subdivision and has again requested EZ benefits for this project.</p> <p>Welcome Homes, Inc. proposes to construct four single family homes in the subdivision on Lots 70, 71, 72 and 73. Welcome Homes, Inc. has submitted two building plans for this project. The homes are both split entry styles and will range in size from 1,061 sq. ft. to 1,444 sq. ft. Three of the homes will have attached two car garages, three bedrooms and two and a half bathrooms. One of the homes will have an attached two car garage, two bedrooms and two bathrooms. All of the homes will have high efficiency furnaces and air conditioning, low E windows and security systems. Included appliances are self-cleaning ranges, space-saver microwaves and dishwashers. The project specifications are included as attachments to the application. The developer will sod the front, side and rear yards and plant at least one tree in front of each house. They also anticipate planting bushes and laying landscaping bark in the front yard. The total project investment is \$591,700. The per unit value of the homes will range from \$144,900 to \$149,900. However, per State statute, only the first \$140,000 of value can be claimed for the Enterprise Zone's 10% investment tax credit. The estimated total financial enterprise zone incentive available to the project is \$66,000. The developer has agreed to comply with the adopted local requirements.</p> <p><u>Discussion</u></p> <p>The City Council established Enterprise Zone-6 with the adoption of Resolution No. 07-408. The State of Iowa made this possible by the approval of the Enterprise Zone Legislation on July 1, 1997 and the revision of the law during the 1998 legislature to include housing development. Later significant amendments came in 2006 with the adoption of new criteria for new zone designation. The stipulations placed upon eligible housing projects include the construction or rehabilitation of four or more single family houses or one or more multi-family units containing three or more units.</p> <p>Based on review of the applicant's request, the project listed above meets the requirements and is located in the Council Bluffs Enterprise Zone-6. As a result, the applicant is eligible for the following benefits: 10% investment tax credit and 100% rebate of state sales and utility use taxes.</p>		

Council Communication
October 13, 2008 City Council Meeting

Staff Recommendation

The Community Development Department recommends approval of the application submitted by Welcome Homes, Inc. for Lots 70, 71, 72 and 73 in Zaiger Addition, for Enterprise Zone benefits.

Enterprise Zone Commission Recommendation

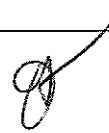
On September 30, 2008, the Council Bluffs Enterprise Zone Commission met and approved the Enterprise Zone application for Welcome Homes, Inc. Motion by Biede, second by Bates to concur with staff recommendation and approve the EZ application for Welcome Homes, Inc., as presented. The motion carried by unanimous voice vote.

VOTE: AYE – Bates, Biede, Hornbeck, Jares, Milford, Norman and Stazzoni; NAY – None;
 ABSTAIN – None; ABSENT – Andersen and Prichard

Attachments

The Welcome Homes, Inc. Enterprise Zone application discussed above has been provided under separate cover.

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



RESOLUTION NO. 08-310

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS
AUTHORIZING A JOINT APPLICATION TO THE IOWA DEPARTMENT OF ECONOMIC
DEVELOPMENT (IDED) BY THE COUNCIL BLUFFS ENTERPRISE ZONE COMMISSION
AND WELCOME HOMES, INC. FOR ENTERPRISE ZONE BENEFITS.**

WHEREAS, The City of Council Bluffs established Enterprise Zone-6 with the adoption of Resolution No. 07-408; and

WHEREAS, Enterprise Zones and the eligible benefits under House File 724 were established to promote economic and housing development in distressed areas; and

WHEREAS, Welcome Homes, Inc. proposes to construct four single-family units and has requested Enterprise Zone benefits; and

WHEREAS, All four of the homes will be located in Zaiger Addition, which is generally located at 25th Avenue and South 16th Street; and

WHEREAS, The legal description of the homes is Lots 70, 71, 72 and 73, Zaiger Addition, City of Council Bluffs, Pottawattamie County, Iowa; and

WHEREAS, On September 30, 2008, the Enterprise Zone Commission held a public meeting to review the request of Welcome Homes, Inc.; and

WHEREAS, After review and consideration of the request, the Enterprise Zone Commission determined that the Welcome Homes, Inc. project meets the requirements to qualify for benefits.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

Section 1.0 The City Council finds that the Welcome Homes, Inc. project is located within the Council Bluffs Enterprise Zone-6 as approved with the adoption of Resolution No. 07-408.

Section 2.0 The City Council declares Welcome Homes, Inc. an eligible entity for Enterprise Zone benefits.

Section 3.0 The City Council approves the Welcome Homes, Inc. request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

Section 4.0 The Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution.

Section 5.0 The provisions of this resolution shall be governed by the laws of the State of Iowa.

Section 6.0 That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

Section 7.0 That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

Section 8.0 That the approval of any and all Enterprise Zone benefits is contingent upon Welcome Homes, Inc. meeting all other City codes and ordinances.

Section 9.0 That this resolution shall become effective immediately upon its passage and approval.

ADOPTED

AND

APPROVED: October 13, 2008

Thomas P. Hanafan

Mayor

ATTEST:

Judith H. Ridgeley

City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this _____ day of _____, 2008, before me the undersigned, a Notary Public in and for said County and State, personally appeared Thomas P. Hanafan and Judith H. Ridgeley, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Judith H. Ridgeley, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

Council Communication
October 13, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A	
Case/Project No.: EZ-08-009	Resolution No.: <u>08-311</u>	Date: <u>Oct. 13, 2008</u>
Subject/Title		
Amendment #1 to 08-HEZ-024		
Applicant		
Porter Homes, Inc.		
Location		
Lots 1, 2, 3, 4, 5 and 6 in Porter's Park Side Subdivision (generally located at 28 th Street and Avenue C)		
Background/Discussion		
<u>Background</u> In October of 2007, Porter Homes, Inc. submitted a request for Enterprise Zone benefits for a project located at North 28 th Street and Avenues B and C. This was formerly City owned property on which three large industrial buildings were acquired and demolished. The city also removed contaminated soils on the southern block and over excavated the northern block. Redevelopment of the area also included the construction of a new neighborhood park on the block between Avenues A and B and 28 th and 29 th Streets, called the Trolley Park.		
<u>Discussion</u> For various reasons that are indicated in the attached letter, Porter Homes has decided to sell six of the lots on Avenue B to BP Quality Homes, L.L.C. (Bill Perdue and Tracey Andrews). BP Quality Homes, L.L.C. has submitted a request for Enterprise Zone benefits for this project and Porter Homes, Inc. has requested an amendment to his Enterprise Zone agreement reducing the number of single family units from 12 to 6 and subsequently reducing the investment from \$1,524,000 to \$762,000. Per an executed development agreement between the City of Council Bluffs and Porter Homes, Inc., the City has a first right of refusal on the reacquisition of the lots. The City has confirmed in writing that it does not wish to exercise its first right of refusal on the lots, allowing to Porter Homes, Inc. to sell the lots to another builder.		
Staff Recommendation		
The Community Development Department recommends approval of amendment #1 to the Enterprise Zone agreement (08-HEZ-024) submitted by Porter Homes, inc. reducing the number of single family homes from 12 to 6 and the project costs from \$1,524,000 to \$762,000.		
Enterprise Zone Commission Recommendation		
On September 30, 2008, the Council Bluffs Enterprise Zone Commission met and approved		

Council Communication
October 13, 2008 City Council Meeting

amendment #1 to the Enterprise Zone agreement (08-HEZ-024) submitted by Porter Homes, Inc. Motion by Norman, second by Biede to concur with staff recommendation and approve amendment #1 to the EZ agreement (08-HEZ-024) submitted by Porter Homes, Inc., as presented. The motion carried by unanimous voice vote.

VOTE: AYE – Bates, Biede, Hornbeck, Jares, Milford, Norman and Stazzoni; NAY – None; ABSTAIN – None; ABSENT – Andersen and Prichard

Attachments

Letter from Porter Homes, Inc.

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department

RESOLUTION NO. 08-311

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS AUTHORIZING SUBMISSION OF AMENDMENT #1 TO EZ AGREEMENT 08-HEZ-024 TO THE IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT (IDED) BY THE COUNCIL BLUFFS ENTERPRISE ZONE COMMISSION AND PORTER HOMES, INC. FOR ENTERPRISE ZONE BENEFITS.

- WHEREAS,** The City of Council Bluffs established Enterprise Zone-4 pursuant to Iowa House File 724 with the adoption of Resolution No. 07-151 and
- WHEREAS,** Enterprise Zones and the eligible benefits under House File 724 were established to promote economic and housing development in distressed areas; and
- WHEREAS,** In October of 2007, Porter Homes, Inc. received approval from the Enterprise Zone Commission and the State of Iowa for enterprise zone benefits to construct 12 single family residential structures; and
- WHEREAS,** All of the units were located in Porter's Park Side Subdivision, which is located on the northwest corner of 28th Street and Avenue B; and
- WHEREAS,** The legal description of the Enterprise Zone assisted units was Lots 1-12, Porter's Park Side Subdivision, City of Council Bluffs, Pottawattamie County; and
- WHEREAS,** Porter Homes, Inc. has requested Amendment #1 to their existing Enterprise Zone Agreement; and
- WHEREAS,** This amendment reduces the number of units from 12 to 6 and subsequently reduces the investment from \$1,524,000 to \$762,000; and
- WHEREAS,** The new legal description of the lots that Porter Homes, Inc. will build on is Lots 1, 2, 3, 4, 5 and 6, Porter's Park Side Subdivision, City of Council Bluffs, Pottawattamie County; and
- WHEREAS,** On September 30, 2008, the Enterprise Zone Commission held a public meeting to review the amendment request of Porter Homes, Inc.; and
- WHEREAS,** After review and consideration of the request, the Enterprise Zone Commission determined that the Porter Homes, Inc. project continues to meet the requirements to qualify for benefits and merits approval of Amendment #1.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

Section 1.0 The City Council finds that the Porter Homes, Inc. project is located within the Council Bluffs Enterprise Zone-4 as approved with the adoption of Resolution No. 07-151.

Section 2.0 The City Council declares Porter Homes, Inc. an eligible entity for Enterprise Zone benefits.

Section 3.0 That the City Clerk shall provide a copy of this resolution to the Iowa Department of Economic Development.

Section 4.0 The City Council approves the Porter Homes, Inc. request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

Section 5.0 The Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution.

Section 6.0 The provisions of this resolution shall be governed by the laws of the State of Iowa.

Section 7.0 That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

Section 8.0 That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

Section 9.0 That the approval of any and all Enterprise Zone benefits is contingent upon Porter Homes, Inc. meeting all other City codes and ordinances.

Section 10.0 That this resolution shall become effective immediately upon its passage and approval.

ADOPTED

AND

APPROVED: October 13, 2008

Thomas P. Hanafan

Mayor

ATTEST:

Judith H. Ridgeley

City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this _____ day of _____, 2008, before me the undersigned, a Notary Public in and for said County and State, personally appeared Thomas P. Hanafan and Judith H. Ridgeley, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Judith H. Ridgeley, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

Council Communication
October 13, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A Resolution No. <u>08-312</u>	Date: <u>October 8, 2008</u>
Case/Project No.: EZ-08-010		
Subject/Title		
Application for Enterprise Zone Benefits		
Applicant		
BP Quality Homes, L.L.C.		
Location		
Lots 7, 8, 9, 10, 11 and 12 in Porter's Park Side Subdivision (generally located at 28 th Street & Avenue B)		
Background/Discussion		
<p><u>Background</u></p> <p>In October of 2007, Porter Homes, Inc. submitted a request for Enterprise Zone benefits for a project located at North 28th Street and Avenues B and C. This was formerly City owned property on which three large industrial buildings were acquired and demolished. The city also removed contaminated soils on the southern block and over excavated the northern block. Redevelopment of the area also included the construction of a new neighborhood park on the block between Avenues A and B and 28th and 29th Streets, called the Trolley Park. For various reasons, Porter Homes has decided to sell six of the lots on Avenue B to BP Quality Homes, L.L.C. (Bill Perdue and Tracey Andrews). BP Quality Homes, L.L.C. has submitted a request for Enterprise Zone benefits for this project.</p> <p>BP Quality Homes, L.L.C. has submitted three building plans they will be utilizing for this project. The building plans and project specifications are attached to the application showing the different floor plans being offered. The homes will have an attached two car garage, three bedrooms, one bathroom (with an additional bath rough in). The homes will range in size from 1,127 finished sq. ft. to 1,144 finished sq. ft. All of the homes will have vinyl siding, low E vinyl windows, high efficiency gas furnaces, 13 SEER air conditioning and power humidifiers. Included appliances are ranges and dishwashers. The developer will sod the front, side and rear yards and plant at least one – two inch diameter tree in front of each house.</p> <p>The total project investment is \$748,000. The per unit value of the homes will range from \$137,000 to \$150,000. However, only the first \$140,000 in value can be applied for through the Enterprise Zone program. The estimated total financial enterprise zone incentive available to the project is \$89,760. The developer has agreed to comply with the adopted local requirements.</p> <p><u>Discussion</u></p> <p>The City Council established Enterprise Zone-4 with the adoption of Resolution 07-151. The State of Iowa made this possible by the approval of the Enterprise Zone Legislation on July 1, 1997 and the revision of the law during the 1998 legislature to include housing development. The stipulations placed upon the housing project include the construction or rehabilitation of four or more single family houses or one or more multi-family units containing three or more units.</p> <p>Based on review of the applicant's request, the project herein listed meets the State Enterprise Zone requirements and is located in the Council Bluffs Enterprise Zone-4. As a result, the applicant is eligible for the following benefits: 10% investment tax credit and 100% rebate of state sales and utility use taxes.</p>		

Council Communication
October 13, 2008 City Council Meeting

Staff Recommendation

The Community Development Department recommends approval of the Enterprise Zone application submitted by BP Quality Homes, L.L.C. for the construction of six single family units on Lots 7, 8, 9, 10, 11, and 12 in Porter's Park Side Subdivision, which is located on the northwest corner of 28th Street and Avenue B.

Enterprise Zone Commission Recommendation

On September 30, 2008, the Council Bluffs Enterprise Zone Commission met and approved the Enterprise Zone application for BP Quality Homes, L.L.C. Motion by Milford, second by Bates to concur with staff recommendation and approve the EZ application for BP Quality Homes, L.L.C. as presented. The motion carried by unanimous voice vote.

VOTE: AYE – Bates, Biede, Hornbeck, Jares, Milford, Norman and Stazzoni; NAY – None;
 ABSTAIN – None; ABSENT – Andersen and Prichard

Attachments

The BP Quality Homes, L.L.C. Enterprise Zone application discussed above has been provided under separate cover.

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



RESOLUTION NO. 08-312

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS
AUTHORIZING A JOINT APPLICATION TO THE IOWA DEPARTMENT OF ECONOMIC
DEVELOPMENT (IDED) BY THE COUNCIL BLUFFS ENTERPRISE ZONE COMMISSION
AND BP QUALITY HOMES, L.L.C. FOR ENTERPRISE ZONE BENEFITS.**

- WHEREAS,** The City of Council Bluffs established Enterprise Zone-4 pursuant to Iowa House File 724 with the adoption of Resolution No. 07-151; and
- WHEREAS,** Enterprise Zones and the eligible benefits under House File 724 were established to promote economic and housing development in distressed areas; and
- WHEREAS,** BP Quality Homes, L.L.C. proposes to construct six single-family units and has requested Enterprise Zone benefits; and
- WHEREAS,** All of the units will be located in Porter's Park Side Subdivision, which is located on the northwest corner of 28th Street and Avenue B; and
- WHEREAS,** The legal description of the Enterprise Zone assisted units is Lots 7, 8, 9, 10, 11 and 12, Porter's Park Side Subdivision, City of Council Bluffs, Pottawattamie County; and
- WHEREAS,** On September 30, 2008, the Enterprise Zone Commission held a public meeting to review the request of BP Quality Homes, L.L.C.; and
- WHEREAS,** After review and consideration of the request, the Enterprise Zone Commission determined that the BP Quality Homes, L.L.C. project meets the requirements to qualify for benefits.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

Section 1.0 The City Council finds that the BP Quality Homes, L.L.C. project is located within the Council Bluffs Enterprise Zone-4 as approved with the adoption of Resolution No. 07-151.

Section 2.0 The City Council declares BP Quality Homes, L.L.C. an eligible entity for Enterprise Zone benefits.

Section 3.0 That the City Clerk shall provide a copy of this resolution to the Iowa Department of Economic Development.

Section 4.0 The City Council approves the BP Quality Homes, L.L.C. request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

Section 5.0 The Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution.

Section 6.0 The provisions of this resolution shall be governed by the laws of the State of Iowa.

Section 7.0 That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

Section 8.0 That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

Section 9.0 That the approval of any and all Enterprise Zone benefits is contingent upon BP Quality Homes, L.L.C. meeting all other City codes and ordinances.

Section 10.0 That this resolution shall become effective immediately upon its passage and approval.

ADOPTED

AND

APPROVED: October 13, 2008

Thomas P. Hanafan

Mayor

ATTEST:

Judith H. Ridgeley

City Clerk

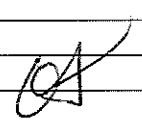
STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this _____ day of _____, 2008, before me the undersigned, a Notary Public in and for said County and State, personally appeared Thomas P. Hanafan and Judith H. Ridgeley, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Judith H. Ridgeley, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

Council Communication
October 13, 2008 City Council Meeting

Department: Community Development	Ordinance No.: N/A	
Case/Project No.: N/A	Resolution No.: <u>08-313</u>	Date: <u>October 13, 2008</u>
Subject/Title		
Execute Consultant Contract to Carryout the 2008 EPA Brownfields Assessment Grant Activities.		
Location		
City-wide, particularly in the South Main Urban Renewal Area, properties generally bounded by 3 rd Street on the east, 16 th Avenue on the south, South Expressway on the west and 9 th Avenue on the north.		
Background/Discussion		
<u>Background</u> The U.S. Environmental Protection Agency (EPA) has established a Brownfields Assessment Grant Program. This Program provides local communities with up to \$400,000 to inventory, characterize, assess and conduct planning and community involvement and \$600,000 to perform cleanup activities related to brownfield sites. No matching funds are required. In 2005 the City was successful in receiving \$400,000 in EPA Brownfields Assessment Grant funds to inventory, assess, and characterize environmental contaminants within the City, particularly in the South Main Urban Renewal area. Through a Request for Qualifications process, Howard R. Green Company, a consultant, was hired to carryout these activities for the 2005 EPA Brownfields Assessment Grants. To date, Phase I Environmental Site Assessments have been completed on 26 properties and Phase II Environmental Site Assessments have been completed on 17 properties in the South Main Urban Renewal area. An additional 23 properties have been identified.		
<u>Discussion</u> On May 21, 2008 the City was awarded two additional \$200,000 EPA Brownfields Assessment Grants to inventory, assess, and characterize hazardous materials and petroleum materials for the City of Council Bluffs, particularly in the South Main Urban Renewal Area. The total amount awarded was \$400,000. Howard R. Green Company has submitted a scope of services to continue to assist the City in preparing cooperative agreements and oversight, community involvement, site inventory, and site-specific activities as detailed in the City's approved EPA Workplans for each grant. The total amount will not exceed \$390,000. These are the same costs utilized to carryout the 2005 EPA Brownfields Assessment Grants.		
Staff Recommendation		
The Community Development Department recommends City Council adopt a resolution authorizing the Mayor to execute a contract with Howard R. Green Company for consultant services for the two 2008 EPA Brownfields Assessment Grants for the South Main area.		
Attachments		
Howard R. Green Company Scope of Services.		



Submitted by: Tina Hochwender, Project Coordinator, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department

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RESOLUTION NO. 08-313

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH HOWARD R. GREEN COMPANY FOR CONSULTANT SERVICES FOR THE TWO 2008 U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) BROWNFIELDS ASSESSMENT GRANTS FOR THE SOUTH MAIN AREA.

- WHEREAS, the City has received two \$200,000 US EPA Brownfields Assessment Grants, for a total of \$400,000, for the South Main area; and
- WHEREAS, the South Main area is generally bounded by 3rd Street on the east, 16th Avenue on the south, South Expressway on the west and 9th Avenue on the north; and
- WHEREAS, the grants will be utilized to inventory, assess, and characterize hazardous and petroleum materials within the South Main area, and
- WHEREAS, Cooperative agreements and oversight, community involvement, site inventory, and site specific activities will be carried out in accordance with the City's approved EPA Workplans; and
- WHEREAS, the Community Development Department recommends that the City Council authorize the Mayor to execute a contract with Howard R. Green Company to assist in completing said work.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to execute a contract with Howard R. Green Company for consultant services for the two 2008 EPA Brownfields Assessment Grants for the South Main area.

ADOPTED
AND
APPROVED: October 13, 2008

Thomas P. Hanafan Mayor

ATTEST:

Judith H. Ridgeley City Clerk

Consultant Scope of Services

City of Council Bluffs, Iowa EPA Brownfields Hazardous Substance and Petroleum Assessment Grants

Part 1: Tasks

Tasks and activities described in this Scope of Services correspond to the Tasks and Activities in the Cooperative Agreement Work Plans submitted by the City of Council Bluffs and approved by EPA. Work Plan Activity numbers were skipped when there was no consultant component to that specific activity.

Task 1: Program Implementation Assistance

Howard R. Green Company will assist the City, as needed, with coordination and implementation of brownfields redevelopment initiatives. All reports, electronic or paper, prepared by Howard R. Green Company will be submitted to the City for review and submittal to EPA. Tasks for each grant include assisting the City of Council Bluffs with:

WP Activity 2: Coordination of government agencies and stakeholders;

WP Activity 4: Brownfields meeting planning and attendance;

WP Activity 5: Preparation of:

- Quarterly Reports;
- Annual Reports;
- Property Profiles;
- Financial status reports; and
- Project Closeout Report.

Estimated fee for Task 1:	Hazardous Materials Assessment Grant	\$5,000
	Petroleum Assessment Grant	\$5,000

Task 2: Community Involvement Assistance

Howard R. Green Company will work with the City to perform the types of services outlined below:

WP Activity 1: Develop a brochure on tasks or sites to be assessed, and/or results of assessment activities;

WP Activity 2: Conduct outreach and education to public stakeholders to obtain selection criteria and prioritization of sites;

Hold public meetings to share results of Phase I and II ESAs;

WP Activity 3: Prepare a display for the City's and EPA websites; and

WP Activity 4: Ongoing updating of Activities 1 through 3 of this Task.

Estimated fee for Task 2:	Hazardous Materials Assessment Grant	\$20,000
	Petroleum Assessment Grant	\$20,000

Task 3: Phase I Environmental Site Assessment

Howard R. Green Company will conduct an environmental scan of the project target area (subject to project boundaries contained in the Cooperative Agreement Work Plan). Efforts will focus on potential hazardous material and petroleum impacts for affected properties. Howard R. Green Company will:

WP Activity 1: Work with the City to update and maintain a Site Priority Matrix for each grant based on the results of the records search and ongoing public input. The site inventory within the project area will be updated;

WP Activity 2: Prepare eligibility requests for target sites and assist the City with obtaining site access agreements; and

WP Activity 3: Complete Phase I Environmental Site Assessments in accordance with ASTM E1527-05 which meets the EPA's All Appropriate Inquiry (AAI) standard.

Estimated fee for Task 3:	Hazardous Materials Assessment Grant	\$40,000
	Petroleum Assessment Grant	\$40,000

Task 4: Phase II Environmental Site Assessments

Howard R. Green Company will assist the City, as needed, with determining which Phase I ESA sites justify completion of Phase II and will prepare the Generic Quality Assurance Project Plan (QAPP) and Property-Specific Sampling and Analysis Checklists (PSSACs) prior to conducting the Phase II ESAs. Phase II ESAs will be completed following the QAPP and PSSACs. In some cases, Supplemental Environmental Site Assessments (ESAs) may be needed to further assess soil and groundwater impact. Howard R. Green Company will work with EPA and the Iowa Department of Natural Resources (IDNR) to obtain acceptance of ESA recommendations.

WP Activity 1: Evaluate Phase I ESAs to determine which properties require Phase II ESAs;

WP Activity 2: Prepare request for site specific work for submission to the EPA and IDNR, as needed;

WP Activity 3: Perform Phase II ESAs in the brownfields target area. The methods and quality will be designed such that data will be useful and appropriate for preliminary use in risk-based evaluation relative to EPA oversight and Iowa Administrative Code (IAC) Chapters 135 and 137;

Estimated fee for Task 4:	Hazardous Materials Assessment Grant	\$110,000
	Petroleum Assessment Grant	\$110,000

Task 5: Work Plans

Howard R. Green Company will assist the City, as needed, with preparation of various plans. All plans, electronic or paper, prepared by Howard R. Green Company will be submitted to the City for review and submittal to EPA. Tasks for each grant include assisting the City of Council Bluffs with:

- WP Activity 1:** Prepare the following plans and documents;
- Quality Assurance Project Plans (QAPP),
 - Site Specific Sampling Plans (PSSACs),
 - Site Addendum for the QAPP,
 - Site Eligibility Determination Requests, and
 - Property Profile Forms (via EPA ACRES program).

Estimated fee for Task 5:	Hazardous Materials Assessment Grant	\$10,000
	Petroleum Assessment Grant	\$10,000

Task 6: Cleanup Planning

Howard R. Green Company will evaluate alternatives for further investigation and/or cleanup at each Phase II property. A report outlining alternatives will be prepared. Tasks for each grant include assisting the City of Council Bluffs with:

- WP Activity 1:** Assist with redevelopment and cleanup planning;
- WP Activity 2:** Evaluate options for site cleanup as related to property transfer and liability management;
- WP Activity 3:** Prepare risk-based remediation strategies consistent with the amended South Main Brownfields Project Area Plan;
- WP Activity 6:** Prepare report of findings, as needed.

Estimated fee for Task 6:	Hazardous Materials Assessment Grant	\$10,000
	Petroleum Assessment Grant	\$10,000

Part 2: Schedule

Task		Start	Complete
	Notice to Proceed	Oct 2008	
1	Program Implementation	Ongoing	4 th Qtr FY 2011
2	Community Involvement Assistance	Ongoing	4 th Qtr FY 2011
3	Phase I ESAs	1 st Qtr FY2009	3 rd Qtr FY2011
4	Phase II ESAs	1 st Qtr FY2009	3 rd Qtr FY2011
5	Work Plans	2 nd Qtr FY2009	3 rd Qtr FY2011
6	Cleanup Planning	ongoing	4 th Qtr FY 2011

*Start date is dependent upon Site Eligibility Determination from EPA and IDNR

**Start date is dependent upon QAPP approval by EPA

Part 3: Budget

The total contract amount of \$390,000 is being offered on a cost-plus, not to exceed basis per the current Howard R. Green Company Hourly Rate Schedule. Each grant budget will be tracked separately and clearly reported on invoices. Costs may be reallocated among the various tasks within each grant with the approval of the City as allowed under the EPA Cooperative Agreement. Additionally, costs may be reallocated to labor from the expense budget or from the expense budget to the labor budget with approval from the City. Funds will not be shifted between grants. Requests by the City for consultant services beyond those included and described in Part 1 and budgeted for in Part 3 will be negotiated under an amended or separate contract agreement.

_____(Describe the Project).

_____(Describe Services).

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SCHEDULE OF FEES AND CONDITIONS
HOWARD R. GREEN COMPANY

A. FEES AND PAYMENT

1. The fee for services will be based on Howard R. Green Company's (hereafter "HRG") standard hourly rates current at the time the work is done. These standard hourly rates are subject to change upon 30 days written notice. Non-salary expenses directly attributable to the project such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the work is done.
2. Payment shall be due within thirty (30) days after date of monthly invoice describing the work performed and expenses incurred during the preceding month.
3. CLIENT agrees that timely payment is a material term of this Agreement and that failure to make timely payment as agreed constitutes a breach hereof. In the event payment for services rendered has not been made within thirty (30) days from the date of invoice, HRG may, after giving seven (7) days written notice to CLIENT and without penalty or liability of any nature, and without waiving any claim against CLIENT, suspend all work on all authorized services as set forth herein. Upon receipt of payment in full for services rendered, plus interest charges, HRG will continue with all services not inconsistent with Article C.4 herein. Payment of all compensation due HRG pursuant to this Agreement shall be a condition precedent to CLIENT using any of HRG's professional services work products furnished under this Agreement.
4. In order to defray carrying charges resulting from delayed payments, simple interest at the rate of eighteen percent (18%) per annum (but not exceeding the maximum rate allowed by law) will be added to the unpaid balance of each invoice. The interest period shall commence thirty (30) days after date of original invoice and shall terminate upon date of payment. Payments will be first credited to interest and then to principal. No interest charge will be added during the initial thirty (30) day period following date of invoice.

B. COMMENCEMENT OF WORK. The work will be commenced immediately upon receipt of this signed purchase order. If after commencement of work the project is delayed for any reason beyond the control of HRG for more than sixty (60) days, the terms and conditions contained herein are subject to revision. Subsequent modifications shall be in writing and signed by the parties to this Agreement.

C. MISCELLANEOUS PROVISIONS

1. **BOOKS OF ACCOUNT.** HRG will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of HRG.
2. **INSURANCE/INDEMNIFICATION/RISK ALLOCATION**
 - (a) HRG will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage arising from the negligent performance by HRG's employees of the functions and services required under this Agreement.
 - (b) HRG is skilled in the professional calling necessary to the services and duties proposed to be performed, and that it shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals of HRG's same locality, and to that end HRG agrees to purchase insurance for HRG, its officers, and employees from and against any and all liability, claims, suits, loss, damages, costs, and expenses arising out of or resulting from any negligent acts, errors, or omissions of HRG, its officers and employees, in the performance of their services and duties hereunder, but not from the negligence or willful misconduct of CLIENT, its officers, and employees. Notwithstanding the existence of professional liability insurance, the total aggregate of HRG's, its employees, officers, directors, agents, or consultants, liability to all parties related to this Agreement shall not exceed \$50,000.00, or the amount of HRG's fee, whichever is less.
 - (c) CLIENT hereby understands and agrees that HRG has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which HRG has been retained to provide professional engineering services. The compensation to be paid HRG for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold HRG, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including, but not limited to, attorney fees and Court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalies, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.
 - (d) Nothing contained within this Agreement shall be construed or interpreted as requiring HRG to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., § 6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.
 - (e) Notwithstanding any provisions in this Agreement to the contrary, if this project involves construction, as that term is generally understood, and HRG does not provide engineering services during construction, including, but not limited to, observation, site visits, shop drawing review, and design clarifications, CLIENT agrees to defend, indemnify, and hold HRG, its consultants, agents, and employees harmless from any and all liability arising out of this project or Agreement.
 - (f) HRG shall not be liable for damages arising out of or resulting from the actions or inaction of governmental agencies, including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits. CLIENT agrees to defend, indemnify, and hold HRG, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of HRG, arising out of or resulting from the same.

3. DOCUMENTS

- (a) The CLIENT acknowledges HRG's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the CLIENT upon completion of the work and payment in full of all monies due to HRG. The CLIENT shall not reuse or make any modifications to the plans and specifications without the prior written authorization of HRG. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold HRG harmless from any claim, liability or cost (including reasonable attorneys fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modifications of the construction documents by the CLIENT or any person or entity that acquires or obtains the plans and specifications from or through the CLIENT without the written authorization of HRG.
 - (b) All computer programs, work product, inventions, patents, copyrights, software, and other like data developed during the course of the project, are and shall remain the sole property of HRG.
 - (c) HRG's liability to CLIENT for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. HRG makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by HRG under this Agreement. In no event shall HRG, its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damage relating to any work performed or not performed, services, acts or omissions, computer programs, software products, or related data furnished hereunder.
 - (d) Environmental Audit/Site Assessment report(s) are prepared for CLIENT's sole use. CLIENT agrees to defend, indemnify, and hold HRG, its consultants, agents, and employees harmless against all damages, claims, expenses, and losses arising out of or resulting from any reuse of the Environmental Audit/Site Assessment report(s) without the written authorization of HRG.
4. **TERMINATION OR ABANDONMENT.** If any portion of the work is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the work not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for services performed during such phase shall be based on HRG's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse HRG for termination costs.
 5. **ATTORNEY FEES.** If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.
 6. **WAIVER.** HRG's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.
 7. **ENTIRE AGREEMENT.** This Agreement, and its attachments, constitutes the entire understanding between CLIENT and HRG relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement. If the CLIENT, its officers, agents, or employees request HRG to perform extra work or services pursuant to this Agreement, CLIENT will pay for the additional services even though an additional written Agreement is not issued or signed.
 8. **SUCCESSORS AND ASSIGNS.** All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.
 9. **OPINION OF PROBABLE CONSTRUCTION COSTS.** Opinion of probable construction costs for the facilities considered and designed under this Agreement are prepared by HRG through exercise of its experience and judgment in applying presently available cost data, but it is recognized that HRG has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that HRG cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from HRG's opinion of probable construction costs.
 10. **INJURY TO WORKERS.** It is understood and agreed that HRG's fee is based on HRG being named as an Additional Insured on construction contractor's insurance policy for Comprehensive General Liability and Builders All Risk Liability, and CLIENT agrees to insert into all Contracts for construction between CLIENT and construction contractor(s) arising out of this design a provision requiring the construction contractor(s) to defend, indemnify, and hold harmless both CLIENT and HRG from any and all actions arising out of the construction project, including, but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of CLIENT or HRG.
 11. **SITE VISITS.** Visits to the construction site and observations made by HRG as part of services during construction under this Agreement shall not make HRG responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make HRG responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s), and for all safety precautions incidental thereto. Such visits by HRG are not to be construed as part of the observation duties of the on-site observation personnel defined below.
 12. **ON-SITE OBSERVATION.** When HRG provides on-site observation personnel as part of services during construction under this Agreement, the on-site observation personnel will make reasonable efforts to guard CLIENT against defects and deficiencies in the work of the contractor(s), and to help determine if the provisions of the Contract Documents are being fulfilled. Their day-to-day observation will not, however, cause HRG to be responsible for those duties and responsibilities which belong to the construction contractor(s), including, but not limited to, full responsibility for the means, methods, techniques, sequences, and progress of construction, and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.

13. **SEVERABILITY.** If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.
14. **DISPUTE RESOLUTION.**
 - (a) **Mediation.** In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and HRG agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The CLIENT and HRG further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.
 - (b) **Arbitration.** In the event the parties to this Agreement are unable to reach a settlement of any dispute arising out of the services under this Agreement, involving an amount of less than \$50,000, in accordance with Paragraph 14(a) Mediation, then such disputes shall be settled by binding arbitration by an arbitrator to be mutually agreed upon by the parties, and shall proceed in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. If the parties cannot agree on a single arbitrator, then the arbitrator(s) shall be selected in accordance with the above-referenced rules.



Howard R. Green Company

HOWARD R. GREEN COMPANY

Billing Rate Schedule
Effective January 1, 2008

<u>Professional Services</u>	<u>Billing Rate Range</u>
Principal	\$185 to \$225
Senior Professional	\$135 to \$185
Professional	\$110 to \$160
Junior Professional	\$80 to \$110
Senior Technician	\$75 to \$100
Technician	\$50 to \$80
Field Personnel	\$50 to \$80
1 – Person w/GPS or Robotic Equipment	\$105
2 – Person Crew w/GPS or Robotic Equipment	\$155
Administrative	\$40 to \$75

Reimbursable Expenses

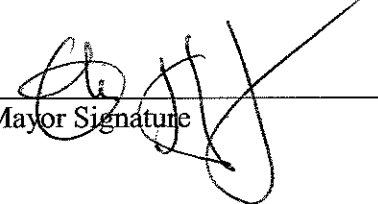
1. All materials and supplies used in the performance of work on this project will be billed at cost plus 10%.
2. Auto mileage will be reimbursed per the standard mileage reimbursement rate established by the Internal Revenue Service. Survey vehicle mileage will be reimbursed on the basis of \$0.85 per mile.
3. Charges for sub-consultants will be billed at their invoice cost plus 15%.
4. A rate of \$6.00 will be charged per Howard R. Green labor hour for a technology and communication fee.
5. All other direct expenses will be invoiced at cost plus 10%.

Council Communication

Department: Parks, Recreation and Public Property Department	Ordinance No. Resolution No. <u>08-314</u>	Date: <u>October 13, 2008</u>
Case/Project No.		
Applicant: Larry N. Foster		
Subject/Title On October 13, 2008, the City Council will be asked to accept the Valley View Greenway Trail project as substantially complete.		
Background/Discussion After City Council approval, Leazenby Construction, Inc., signed an agreement on May 5, 2008, for the construction of the Valley View Greenway Trail project. The total completed cost for the project is \$155,120.05.		
Recommendation I recommend that the City Council adopt the resolution declaring the Valley View Greenway Trail project as substantially complete and authorize the Finance Department to release the retainage of \$7,756.00 in 30 days.		

Larry N. Foster

Mayor Signature



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RESOLUTION NO. 08-314

RESOLUTION ACCEPTING THE COMPLETION OF THE VALLEY VIEW
GREENWAY TRAIL PROJECT AND DIRECTING THE DIRECTOR OF FINANCE
TO RELEASE THE RETAINAGE OF \$7,756.00 IN 30 DAYS.

WHEREAS, Leazenby Construction, Inc., has completed the work required for the Valley
View Greenway Trail project; and

WHEREAS, the City of Council Bluffs City Council has been advised and does believe the
contract has been completed.

NOW, THEREFORE, BE IT RESOLVED
BY THE
CITY COUNCIL OF THE
CITY OF COUNCIL BLUFFS, IOWA

That Leazenby Construction Inc., has successfully completed the Valley View Greenway
Trail project. That the Director of Finance be and is hereby authorized to release retainage
of \$7,756.00 in 30 days.

ADOPTED
AND
APPROVED October 13, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: FY08-09
Applicant _____

Ordinance No. _____
Resolution No. 08-315

Date: October 13, 2008

SUBJECT/TITLE

Council consideration of a resolution accepting the work of Swain Construction as complete and authorizing release of the retainage after 30 days if no claims are filed in connection with the 8th Avenue North Curb and Gutter Replacement.

BACKGROUND/DISCUSSION

- Prime Square redevelopment sole access is to 8th Avenue between So. 6th Street and So. Main Street.
- 8th Avenue construction required enhancement of curb and gutter for drainage and resurfacing to handle new traffic.
- The developer is to replace the south side curb and gutter.
- The City will replace the north side curb and gutter with this contract.
- Public Works operations will complete resurfacing.

	Division I	Division II	Division III	Division VIII	Total
• Original contract amount	\$4,195.00	\$20,172.50	\$6,700.00	\$3,973.50	\$35,041.00
Change Orders	(\$ 397.20)	(\$ 194.10)		(\$ 435.48)	(\$ 1,026.78)
Final contract amount	\$3,797.80	\$19,978.40	\$6,700.00	\$3,538.03	\$34,014.23
Less previous payments	(\$3,607.91)	(\$18,979.48)	(\$ 6,365.00)	(\$3,361.12)	(\$32,313.51)
Retainage due contractor	\$ 189.89	\$ 998.92	\$ 335.00	\$ 176.91	\$ 1,700.72

RECOMMENDATION

Approval of this resolution.



RESOLUTION
No. 08-315

**RESOLUTION ACCEPTING THE WORK OF
SWAIN CONSTRUCTION IN CONNECTION WITH
THE 8TH AVENUE NORTH CURB LINE AND GUTTER REPLACEMENT
AND AUTHORIZING THE FINANCE DIRECTOR TO ISSUE
A CITY CHECK IN THE AMOUNT OF \$1,700.72**

- WHEREAS, the City of Council Bluffs, Iowa, entered into an agreement with Swain Construction, Omaha, NE, for the 8th Avenue North Curb and Gutter Improvements; and
- WHEREAS, said contractor has fully completed the construction of said improvements in accordance with the terms and conditions of said contract and plans and specifications filed with the City clerk; and
- WHEREAS, a request for final payment in the amount of \$1,700.72 to Swain Construction has submitted to the city council for approval and payment; and
- WHEREAS, final payment is due 30 days after acceptance of the work; and
- WHEREAS, the city council of the City of Council Bluffs has been advised and does believe that said \$1,700.72 constitutes a valid obligation of the City and should in its best interest be paid.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That said report of the engineer is hereby approved and adopted, and said improvements are hereby accepted as having been fully completed in accordance with said plans and specifications.

AND BE IT FURTHER RESOLVED

That the finance director is hereby authorized and directed to issue a city check in the amount of \$1,700.72 payable to Swain Construction from budget codes Division I, G21600-676000; Division II, G21600-676200; Division III, G21600-676500 and Division VIII, G21600-676900 Project # 00332.

ADOPTED
AND
APPROVED October 13, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

COUNCIL COMMUNICATION

Department: Public Works Ordinance No. _____ First Reading Oct. 13, 2008
Case/Project No.: FY08-08C & FY09-06A Resolution No. 08-316
Applicant _____

SUBJECT/TITLE

Council consideration of a resolution accepting the bid of Bluffs Electric, Inc. in the amount of \$466,094.80 for the US Hwy 275 Street Lighting.

BACKGROUND/DISCUSSION

- On October 3, 2008, bids were received in the City Clerk's office as followed:

	Division I	Division VI	Total
Bluffs Electric, Inc., Council Bluffs, IA	\$ 7,115.00	\$458,979.80	\$466,094.80
Iowa Electric, Council Bluffs, IA	\$15,250.00	\$514,520.00	\$529,770.00
Sadler Electric, Inc., Omaha, NE	\$24,745.00	\$516,779.00	\$541,524.00
ABC Electric, Inc., Council Bluffs, IA	\$24,900.00	\$554,430.04	\$579,330.04
Watts Electric Co., Lincoln, NE	\$23,900.00	\$574,166.00	\$598,066.00
Engineer's Opinion	\$25,000.00	\$794,635.00	\$820,000.00

- The Iowa Department of Transportation has undertaken three projects to completely rebuild US Hwy 275 for the Missouri River to I-29 through the City of Council Bluffs. The project involves replacement of the 2 lane roadway with a new 4 lane divided roadway and service roads.
- The first two IDOT projects are complete and the third and final project will be constructed in 2008.
- The City of Council Bluffs will be responsible for providing and maintaining street lighting on the new 4 lane divided roadway and service roads.
- The roadway completed to date has removed all old street lighting and the area is very dark and offers an unsafe condition for the motoring public.
- On those areas where portions of the new 4 lane roadway and service roads have been constructed the City proposes to construct street lighting. The city created two projects to accomplish this work. Project FY08-06C covers work from South Expressway to 24th St.. Project FY09-06A covers work from 24th St. to the Missouri River. Due to IDOT 275 construction phasing both projects will be constructed under FY08-06C in 2009.
- The project will provide street lighting from 24th Street east to the east I-29 ramps utilizing steel poles and underground power spaced at approximately 200' on center on both sides of the road. In the more rural section west of 24th Street the project will provide street lighting at the intersections of Hwy 275 at Council Point Road and So. 36th Street.
- The project will install a total of ninety- four (94) street lights.
- The project schedule is to set the Public Hearing August 25, 2008; Hold Public Hearing September 8, 2008; Letting October 2, 2008; and Award at the October 13, 2008, council meeting.
- Project FY08-08C is in the 2008 CIP and is funded with \$600,000 in general obligation bond funds.

RECOMMENDATION

Approval of this resolution.



RESOLUTION
NO. 08-316

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE AN AGREEMENT WITH
BLUFFS ELECTRIC, INC. FOR THE
US HWY 275 STREET LIGHTING
FY08-08C & FY09-06A**

WHEREAS, the plans, specifications, and form of contract for the US Hwy275 Street Lighting are on file in the office of the City Clerk; and

WHEREAS, a Notice of Public Hearing was published, as required by law, and a public hearing was held on September 8, 2008, and the plans, specifications and form of contract were approved; and

WHEREAS, Bluffs Electric, Inc. has submitted a low bid in the amount of \$466,094.80 for this contract.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the bid of Bluffs Electric, Inc. in the amount of \$466,094.80 is hereby accepted as the lowest and best bid received for said work; and

BE IT FURTHER RESOLVED

That the City Council does hereby award the contract in connection with the US Hwy. 275 Street Lighting; and

BE IT FURTHER RESOLVED

That the Mayor and City Clerk are hereby authorized, empowered, and directed to execute an agreement with Bluffs Electric, Inc. for and on behalf of the City of Council Bluffs, upon approval by the City Attorney of the certificate of insurance and payment and performance bonds as required by the contract specifications.

ADOPTED
AND
APPROVED October 13, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

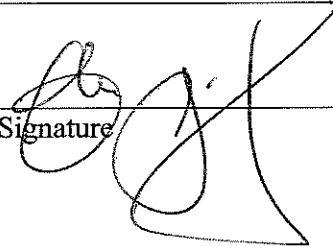
Council Communication

Department: Legal	Ordinance No.	
Case/Project No.	Resolution No. <u>08-317</u>	Date: <u>October 13, 2008</u>
Applicant		
SUBJECT/TITLE		
A resolution to authorize filling the Assistant City Attorney I position in the City Legal Department.		
BACKGROUND		
The Legal Department was authorized to hire an additional attorney as of July 1, 2008. Interviews are currently taking place, but hiring in the near future is a priority. The resume of the successful candidate will be presented to Council at study session and the blanks in the resolution will be completed.		
RECOMMENDATION		
I respectfully recommend approval of this resolution.		

Richard Wade

Department Head Signature

Mayor Signature



RESOLUTION NO. 08-317

A RESOLUTION APPOINTING _____ TO THE POSITION OF
ASSISTANT CITY ATTORNEY I.

WHEREAS, City Council has approved the hiring of an assistant city attorney I in the Legal Department;
and

WHEREAS, it is the recommendation of the City Attorney to hire _____ to fill
this position; and

WHEREAS, _____ shall begin employment on _____, 2008 at Pay
Grade 25, Step _____.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

The position of Assistant City Attorney I be filled by _____ as herein above stated.

ADOPTED
AND
APPROVED October 13, 2008

Thomas P. Hanafan, Mayor

Attest: _____
Judith Ridgeley, City Clerk

Memo

To: Members of City Council

From: Mayor Tom Hanafan

Date: September 30, 2008

Re: Appointments for Oct 13, 2008 Council Meeting

With City Council concurrence, I would like to make the following appointments:

Civil Rights Commission

Appoint Denise Carle at 819 Military Ave August 1, 2010.

Library Board of Trustees

Appoint James Watson at 132 Charles Park Dr, with term expiring on July 1, 2010.